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ABSTRACT

This report contains a compilation of State-by-State statutory provisions relating to the tort liability of school districts and to their purchase of liability insurance. The statutory provisions described herein reveal various degrees of governmental immunity made available to school districts. (JF)

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School Law Summaries
Compiled by the NEA Research Division
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TORT LIABILITY AND LIABILITY INSURANCE

March 1969

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General Information

Contents

This compilation is a state-by-state summary of statutory provisions relating to the tort liability of school districts and to their purchase of liability insurance.

Reporting and Revision Scheme

The information that follows is another section of the school law series conceived as a continuing legislative reporting service of the NEA Research Division, aimed at providing up-to-date information on certain types of school legislation in each state.

This material will be revised on an irregular basis as changes in the law warrant. Since the material presented does not justify separate page treatment for each state, the entire section will be replaced at one time. All changes through the 1968 legislative sessions are included.

General Comments

Although governmental immunity of school districts from liability for their own torts or those of their agents, officers, or employees, is still the rule in most jurisdictions, judicial and legislative inroads have been made into this common law doctrine in the past five years. In the absence of statute or court decision holding the school district liable, teachers, supervisors, and administrators are personally responsible for damages for injuries inflicted on pupils as a result of their negligent act or omission. If no insurance is provided by the school district, any judgment rendered against them must be met out of personal funds.

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Governmental immunity is no longer available to school districts by judicial decree in Arizona, Illinois, and Wisconsin. In California, Hawaii, Iowa, Nevada, Oregon, Utah, and Washington, statutes have waived this immunity in varying degrees. Immunity was judicially waived in Minnesota but reinstated by the legislature for school districts with a provision that it no longer would be available after January 1, 1970. School districts must save harmless and indemnify employees against whom judgments are rendered for school-connected torts in Connecticut, Massachusetts, New Jersey, and New York. Wyoming permits school districts to indemnify employees.

An NEA publication, Who Is Liable for Pupil Injuries? (prepared by the Research Division in 1963 for the National Commission on Safety Education) contains a thorough discussion of the principles behind the doctrine of sovereign immunity as well as the types of liability in which teachers and school districts might find themselves involved.

Even in the states where school districts still enjoy governmental immunity, they are generally either required or permitted to carry liability insurance to cover the operation of school buses. Apart from the statutory provisions relation to school bus insurance, which are not included in this summary,

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at the present time California requires and 22 other states expressly authorize school districts to carry liability insurance. In Illinois the statute is mandatory for Chicago and permissive for the rest of the state. These laws allow school districts to protect themselves or their agents, officers, or employees against damages for injuries to persons or property arising out of their negligent or wrongful acts or omissions while acting in the discharge of their duties within the scope of their office or employment. Summaries of these statutes are set out in Part I. For those states where save harmless statutes or laws imposing direct liability on school districts prevail, the abstracts of such legislation are also included.

In five states there are statutory provisions relating to liability insurance that may be applicable to school districts also, although school districts are not specifically mentioned. These laws are described in Part II.

It should be noted that in states where there is no express statutory authority to purchase liability insurance, school districts may be relying on their implied powers to buy coverage; in some of these states, however, school districts may be unable to procure liability insurance in the absence of specific statutory authority.

One should be aware, also, that even when school districts are empowered to carry liability insurance, whether for school transportation or otherwise, provisions in the law differ with respect to the waiver of governmental immunity. Some statutes expressly provide that the district's immunity is waived, some are silent, and still others are quite specific that the immunity is waived to the extent of the insurance obtained. A few state laws make it clear that the insurance company is the party to be sued, or that the insurer may not assert the defense of governmental immunity.

Unless there is express waiver by statute, it is the prevailing judicial view that the existence of insurance coverage does not affect the school district's immunity from tort liability, and most courts will not accept a suit against an immune school district, even if only to determine the amount of damages the insurance company is to pay. To overcome this difficulty and to derive the protection the premium has purchased, it is advisable to write into the insurance policy a provision that the claimant may maintain a direct action against the insurance company, and that the defense of governmental immunity is not to be asserted by the insurer. The more desirable method is a change in the statute to permit suits against school districts where there is liability insurance coverage.

On the other hand, a few courts have held that when insurance coverage has been purchased, the school district's immunity from tort liability is removed to the extent of the policy amount. This judicial minority reasons that the primary purpose of the immunity doctrine--to protect public funds--no longer exists when insurance protection is secured.

The doctrine of sovereign immunity has been viewed as archaic and unjust. Acceptance of this view is evidenced in the trend to abrogate this doctrine by statute or judicial decree. Pupils injured as a result of negligence by school employees are assured recompense for damages directly or indirectly from school districts in 14 states either because governmental immunity has been abrogated or because school districts are required by statute to indemnify school employees against financial loss. In 18 other states, there is a possibility of recovery of damages by pupils if liability insurance has been secured.

PART I. STATUTORY PROVISIONS RELATING TO TORT LIABILITY OF SCHOOL DISTRICTS AND PERMITTING THE PURCHASE OF LIABILITY INSURANCE

ARIZONA

Liability of School Districts

Since the 1963 decision in Stone v. Arizona Highway Commission (381 P. (2d) 107), governmental immunity from tort liability has been abolished and all previous Arizona decisions upholding such immunity are overruled. School districts are included in this general disclaimer of immunity.

Insurance

Although school districts are not specifically included, following the Stone decision a statute was passed authorizing the purchase of liability insurance covering officers, agents, and employees of the state, its boards, departments, and agencies. (Arizona Revised Statutes. Sec. 38-41)

CALIFORNIA

Statutory Liability of School Districts

A public entity, including a school district, is liable for injury caused by a dangerous condition of its property, if the injured party establishes that the property was in a dangerous condition at the time of the injury, that this condition proximately caused the injury, that the injury was reasonably foreseeable because of the dangerous condition and that either a negligent or wrongful act or omission of an employee within the scope of his employment created the dangerous condition or that the public entity had actual or constructive notice of the dangerous condition a sufficient time prior to the injury to have corrected it. A public entity is also liable for an injury proximately caused by an act or omission of an employee acting within the scope of his employment if the act or omission would have given rise to a cause of action against the employee.

Under this statute, injury means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, reputation, character, feelings, or estate. (California Government Code. Secs. 810, 815.2, 835)

Liability Insurance

The governing board of any school district must insure against liability of the district and personal liability of the members of the board, officers, and employees of the district for damages for death, injury to a person, or damage or loss of property caused by the negligent act or omission of the member, officer, or employee when acting within the scope of his employment. (California Education Code. Sec. 1017)

COLORADO

Boards of education have the discretionary authority to procure liability insurance covering the school district, its directors, and employees. Each insurance policy purchased shall contain a provision that the carrier will not assert the defense of sovereign immunity within the limits of the policy. The failure to provide insurance shall not create any liability against the school district. (Colorado Revised Statutes. Secs. 123-30-10(23), 123-30-11)

CONNECTICUT

Mandatory Save Harmless Law

Protected under this law are the following: any school-board member, teacher, or other school employee, or any member of the supervisiory or administrative staff, and any student teacher doing practice teaching under the direction of a teacher employed by a town or state board of education. The provision also extends to the state board of education and its employees as well as members of the commission on higher education.

The school boards are required to save these individuals harmless from financial loss and expense, including legal fees and costs arising out of any demand, claim, suit, or judgment by reason of alleged negligence or any act resulting in accidental bodily injury or death to any person, or damage to any property in or out of the school building, provided that the teacher, member, or employee was acting in discharge of his duties within the scope of his employment or under the direction of the board of education at the time of the accident.

Insurance

Boards of education may purchase liability insurance to cover persons protected under the save harmless statute or elect to act as self-insurers.

(Connecticut General Statutes Annotated, Revision of 1958. Secs. 10-235, 10-236)

FLORIDA

The county boards of education are authorized to provide legal services for the employees of the boards who might be sued in tort for accidents which occur while they are on active duty supervising students. (Florida Statutes Annotated. Sec. 230.234)

HAWAII

The 1957 State Tort Claims Act waived governmental immunity of the state of Hawaii and any of its agencies, for liability for certain torts, including negligence, of its employees. Excepted from the law are punitive damages, actions for assault and battery, libel and slander, false imprisonment, misrepresentation, deceit or interference with contract rights.

State agencies include the executive departments, boards, and commissions of the state; employees of the state include officers and employees of any state agency.

Since Hawaii public-school teachers are employed by the state department of education, the provisions of this law are applicable to them. (Revised Laws of Hawaii, 1955. 1960 Supplement, Ch. 245A)

ILLINOIS

Statutory Liability

Following the 1959 decision in Molitor v. Kaneland Community School District No. 302 (163 N.E. (2d) 89) abrogating governmental immunity of school districts, the legislature declared it to be public policy that school districts, in the exercise of their purely governmental functions, be protected from the excessive divergence of their funds for purposes not directly connected with their statutory function if liability is imposed by a court. Therefore, the statute enacted specified that recovery from a school district would be limited to $10,000 and that written notice of injury must be filed with the school district within six months of the date of injury. These two provisions were subsequently declared unconstitutional by the courts. In Lorton v. Brown County Community Unit School District No. 1 (220 N.E. (2d) 161 (1966)) the Illinois Supreme Court held that the notice requirement constituted special legislation and was therefore void. The $10,000 limitation was found to be arbitrarily formulated in that it applied only to school districts (Treece v. Shawnee Community Unit School District No. 84, 233 N.E. (2d) 550 (1968)). However, a provision requiring that any civil action against the school district be brought within one year has been left intact by the courts. (Smith-Hurd Illinois Annotated Statutes. Ch. 122, secs. 821-831)

Save Harmless Statute

It is the duty of school boards to indemnify and protect school districts, members of school boards, employees, and student teachers against death, bodily injury, and property damage claims and suits, including the cost of defense, whenever damages are sought for wrongful acts alleged to have been committed in the course of employment.

Insurance

The Chicago board of education shall have the duty to insure any member of the board, or any agent, employee, teacher, officer, or member of the supervisory staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim brought against such person for alleged negligence or other wrongful act resulting in death, bodily injury, or property damage, providing that such person was acting within the scope of his duties at the time of the occurrence.

School boards, other than Chicago, shall have the power to insure against any loss or liability of the school district, members of the school boards, employees, and student teachers, by reason of death, bodily injury, and property damage claims and suits, including defense thereof, when damages are sought for negligent or wrongful acts allegedly committed within the scope of employment or under the direction of the school board. (Smith-Hurd Illinois Annotated Statutes. Ch. 122, secs. 10-20.20, 10-20.3, 34-18.1)

INDIANA

The individual school boards may purchase insurance protecting the school corporation, members of the governing body, employees, contractors, and agents from any liability, risk, accident, or loss relating to any school property, contract, activity, or related activity for acts committed in the course of employment. (Burns Annotated Indiana Statutes. Sec. 28-6410 (14))

IOWA

Statutory Liability

Effective in January of 1968, every municipality, defined to include school districts, is subject to liability for its torts and those of its officers and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

Under this statute, tort means every civil wrong which results in wrongful death or injury to person or injury to property and includes but is not restricted to actions based on negligence, breach of duty, or nuisance.

Knowledge of the defect or the existence of an alternate safe route will serve as a defense to an action. Torts arising out of the execution of a statute, ordinance, resolution, rule, or regulation will not be actionable. A remedy obtained against a municipality is exclusive as against the employee. An action must be brought within three months unless the municipality is given notice of the tort within 30 days of its occurrence.

Save Harmless Law

The governing body of a municipality shall defend any of its officers and employees and shall save harmless and indemnify such officers and employees against any tort claim or demand arising out of an alleged act or omission occurring in the performance of duty.

Insurance

Municipalities may purchase liability insurance which acts as a waiver to all exceptions to this statute. (Iowa New Laws. 1967. p. 745)

KANSAS

The board of education of a unified school district may provide legal counsel at district expense to any members of the board of education, school district officers, or employees who are sued in situations relating to and arising out of the performance of their office or employment: Provided that no teacher or other employment contract shall make reference to or incorporate the provisions of this sentence; nor shall the provisions of this sentence be construed as any part of the consideration of employment of any teacher, officer, or other employee of the board. (Kansas Statutes Annotated, 1967 Supplement. Sec. 72-6754)

MAINE

Superintending school committee and school directors may, at their discretion, pay the premiums on liability insurance for employees and school officials. (Maine Revised Statutes Annotated. Ch. 20, sec. 473)

MASSACHUSETTS

Mandatory Indemnification Law

A school district must indemnify a school employee in a capacity requiring certification, for expenses or damages he sustained by reason of a claim against him for negligence or other act committed in the course of his employment which results in accidental bodily injury, death, or accidental damage to or destruction of property. The school district may indemnify the employee for damages sustained in an action against him arising out of any other acts committed in the course of his employment. (Annotated Laws of Massachusetts. Ch. 41, sec. 100C)

Insurance

A town may appropriate funds to pay premiums for liability insurance covering the situations above. (Annotated Laws of Massachusetts. Ch. 40, sec. 5(1))

MICHIGAN

Liability of School Districts

In 1965 the Michigan Supreme Court held that the defense of governmental immunity was no longer available to political subdivisions of government (Myers v. Genesee County Auditor, 133 N. W. (2d) 190). Subsequent decisions have upheld the immunity of school districts on the theory that the state is clothed with absolute sovereign immunity and that a school district is an agency of the state rather than a political subdivision.

A statute provides that governmental agencies, including school districts, are liable for injury and property damage caused by the negligent operation of a motor carrier or a dangerous or defective condition of a public building but not a latent defect. It is specifically provided that the statute does not constitute any other waiver of immunity.

Insurance

Governmental agencies are authorized but not required to pay counsel fees and any claim for injuries to persons or property caused by the negligence of an employee acting within the scope of his employment. Liability insurance may be purchased by the agency but does not operate as a waiver of immunity. (Michigan Statutes Annotated. Sec. 3.996(101))

MINNESOTA

Statutory Liability

Every municipality is subject to liability for its torts and those of its officers, employees, and agents acting within the scope of their employment. Exceptions are made for executions of statutes and discretionary acts. Maximum liability is $25,000 when the claim is one for death by wrongful act or omission, and $50,000 for any other claim; $300,000 is the limit for all claims arising out of a single occurrence. No award may include punitive damages.

Notice must be given to the governing body of the municipality within 30 days of the injury. No action may be brought unless the requisite notice is given and the action is brought within one year of the injury.

(NOTE: These provisions are not applicable to school districts unless insurance is procured.)

Governmental immunity from tort liability is enacted as a rule as statutory law applicable to all school districts in the same manner and to the same extent as it was applied on and prior to December 13, 1962, notwithstanding the Spanel v. Mounds View School District (118 N.W. (2d) 795) decision wherein the court abrogated the governmental immunity rule.

However, this section granting immunity to school districts is intended to expire on January 1, 1970.

Insurance and Legal Counsel

Municipalities (including school districts) may procure insurance against their liability and that of their officers, employees, and agents for damages resulting from torts, including those for which the municipality is immune. The amount of insurance may be in excess of the maximum liability established by the statute. Procurement of insurance constitutes a waiver of immunity to the extent of the liability stated in the policy, but has no effect on the liability of the municipality beyond the coverage provided.

Another section specifically provides that the governing body of any independent school district may procure against the liability of the school district or its officers and employees for damages for wrongful acts or omissions. The

contract of insurance must provide for a waiver of tne defense of immunity by the insurer up to the limits of the policy.

Upon written request of the teacher involved, a school district must provide legal counsel for any school teacher against whom a claim is made for recovery of damages in any tort action for negligence committed in the course of employment.

Provision of counsel shall not be construed to render the school district liable for its torts except as otherwise provided by law, or as making the school district liable for payment of any judgment, costs, or disbursements where such is rendered against the teacher and not the school district.

Save Harmless--Authority To Indemnify Employee

The governing body of a municipality, including school districts, may defend, save harmless, and indemnify any of its officers and employees against any tort claim, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty. This provision does not apply in the case of malfeasance in office or willful conduct or wanton negligence. The governing body of any municipality may compromise, adjust, and settle tort claims against the municipality and may appropriate money for the payment of amounts agreed upon. Any settlement above $2,500 shall not be effective until approved by the district court. (Minnesota Statutes Annotated. Secs. 466.01--466.12, 127.03, 123.41)

MONTANA

The board of trustees of a school district, county high school, junior college, or community college is authorized to purchase insurance coverage for the school district, school officials, and employees against liability for the death, injury, or disability of any person or damage to any property. The defense of sovereign immunity cannot be raised by either the insurer or the insured, and no attempt may be made to bring the existence of insurance into issue at trial. (Revised Codes of Montana 1947. Sec. 75-1645)

NEVADA

Statutory Liability

The state has waived all immunity from liability of all political subdivisions of the state and has consented to have their liability determined in accordance with the same rules of law as applied to civil actions against individuals and corporations.

An action may be brought against any political subdivision, including a school district, except an action based on an act or omission arising out of the execution of a statute or regulation, or the failure to exercise or perform a

discretionary function. No award may include punitive or exemplary damages or may exceed $25,000 for a single claimant. Claim must be presented to the governing body within six months and no action may be brought unless the governing body refuses to approve the claim or fails to act within 90 days. The governing body may approve any claim to the extent of $1,000 and pay such claim out of its funds.

Insurance

The state and any political subdivision may insure itself and any employee against tort liability and the expense of defending a claim. (Nevada Revised Statutes. Secs. 41.031--41.038)

NEW HAMPSHIRE

Permissive provisions for the purchase of insurance appear in two sections:

(1) School districts may raise money to procure insurance against such risks of loss, cost, or damage to itself, its employees, or its pupils as the school board may determine.

(2) It is lawful for the state or municipal subdivision, including school districts, to procure liability insurance. In any action against a government unit which has procured insurance, neither the insurer nor the insured shall be allowed to plead as a defense, immunity from liability resulting from a governmental function. Liability shall be determined as in the case of a private corporation, but shall not exceed the limits of the insurance coverage. (New Hampshire Revised Statutes Annotated. Secs. 194:3 and 412:3)

NEW JERSEY

Mandatory Save Harmless Law

It is mandatory that whenever any civil action has been brought against any person holding any office, position, or employment, including any student teacher, for acts or omissions arising out of the performance of duties, the board of education shall defray all costs of defending the action, including reasonable counsel fees and expenses, together with the costs of appeal, if any, and shall save harmless and protect that person from any financial loss.

Additional sections extend the same provisions to the employees of the department of higher education and members of the state board of education.

The school board must also reimburse members and employees for the cost of defending a criminal action should final disposition result in favor of the employee.

Insurance

The school board may purchase appropriate insurance to maintain the protection outlined above. (New Jersey Statutes Annotated. Secs. 18A:12-20, 18A:16-6, 18A:16-6.1, 18A:60-4)

NEW MEXICO

The liability insurance statute states that its purpose is to provide a means for recovery of damages for death, personal injury, or property damage resulting from the employer's or employee's negligence occurring during the course of employment by the state, county, city, school district, and other public agency or corporation, its officers, agents, and employees.

These units may insure against liability for damages resulting from the negligence or carelessness of officers and employees during the course of their employment, and for such damages resulting from the dangerous condition allegedly due to their negligence or carelessness. The premium for the coverage is a proper charge against the treasury of the government unit.

Law suits may be maintained against the government units, including school districts, and the persons involved, for negligence of officers, agents, or employees occurring in the course of employment; provided, no judgment shall run against any of these government units unless there is liability insurance to cover the amount and cost of such judgment. Plaintiff shall on demand of the defendant waive the amount of any judgment not covered by liability insurance. (New Mexico Statutes, 1953 Annotated. Secs. 5-6-18--5-6-22)

NEW YORK

Mandatory Save Harmless Law

Boards of education are required to save harmless and protect all teachers, practice or cadet teachers, and members of the supervisory staff or employees from financial loss arising out of any claim, demand, suit, or judgment by reason of alleged negligence or other act resulting in accidental bodily injury to any person or accidental damage to any property inside or outside the school building, provided the individuals thus protected, at the time of the accident or injury, were acting in the discharge of their duties, within the scope of their employment and/or under the direction of the school board.

Insurance

The school boards may arrange for and maintain appropriate insurance or may elect to act as self-insurers to maintain the protection outlined above.

Corporal Punishment--Legal Services and Fees, and Insurance

Another statutory provision requires school boards to provide an attorney or pay attorney's fees and expenses

necessarily incurred in the defense of a teacher, or member of the administrative and supervisory staff, or employee in any civil or criminal action arising out of disciplinary action taken against any pupil while in the discharge of his duties.

The school boards may arrange for and maintain appropriate insurance or act as self-insurers for this protection. (New York Education Law. Secs. 2560, 3023, and 3028)

NORTH CAROLINA

Every county or city board of education is authorized and empowered to pay premiums for liability insurance for damages by reason of death or injury to person or property caused by negligence or tort of its agent or employee.

Any school board securing liability insurance is authorized to waive its governmental immunity from liability for damages due to negligence or tort of any agent or employee acting in the scope of authority or course of employment. Such immunity shall be deemed waived by the act of securing insurance but only to the extent that the board is indemnified by insurance for such negligent act or tort.

By issuing the policy, the insurer waives any defense based on governmental immunity. The contract by its terms must adequately insure against liability for damages proximately caused by negligent acts or torts of agents or employees of the school board or the agents or employees of a particular school in a county or city administrative district, when acting within the scope of their authority or in the course of their employment. Any person sustaining damages may sue the insured county or city school board in a state court. It shall be no defense that the negligence or tort complained of was in pursuance of governmental, municipal, or discretionary function of such school board, if, and to the extent, it has liability insurance coverage.

School boards may incur liability under this section only with respect to claims arising after insurance was procured and during the time when such insurance was in force.

Liability shall not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance determined by a jury. But the defendant may request a jury determination on this issue.

These provisions do not apply to damage claims caused by negligent acts or torts of a public-school bus driver or a driver of a school transportation service vehicle, the operation of which is paid for out of the state's nine-month school fund (For damage claims of this nature, see sections 115-193 and 143-300.1). (General Statutes of North Carolina. Sec. 115-53)

OREGON

Statutory Liability

Every public body, including a school district, is liable for its torts and those of its officers, employees, and

agents acting within the scope of their employment, whether governmental or proprietary. Exceptions are made for acts or omissions committed in the execution of a statute or the performance or failure to perform a discretionary function.

Recovery is limited to $25,000 for property damage. Up to $50,000 may be recovered by one person for bodily injury or death, but no more than $300,000 may be paid in damages arising out of a single occurrence. No award may include punitive damages.

Notice of the property damage, injury, or death must be given to the public body within 45 days from the occurrence, and action must be commenced within one year.

Save Harmless Law

Public bodies may save harmless, indemnify, and defend their officers, employees, and agents for claims and actions brought against them for acts and omissions committed in the course of their employment.

Insurance

Any public body may purchase liability insurance to cover any liability imposed under this statute. (Oregon Revised Statutes. Secs. 30.260--30.300)

PENNSYLVANIA

The school board in every school district has full power and authority to enter into insurance contracts for the purpose of insuring every employee of the district against liability for damages sustained by pupils or others as a result of the employee's negligence in the performance of his or her duties during the course of employment. (Purdon's Pennsylvania Statutes Annotated. Title 24, Sec. 7-774)

SOUTH DAKOTA

School boards are empowered to carry public liability insurance protecting their employed personnel against liability suits which may be brought against them for acts of negligence while performing their duties as employees of the school district. (South Dakota Code of 1939. 1960 Supplement. Sec. 15-3815)

UTAH

Statutory Liability of School Districts

Governmental immunity of the state, any of its agencies and political subdivisions, including school districts, has been waived in suits for any injury caused by a defective or dangerous condition of any public building or structure, excluding a latent defect; any injury resulting from the negligent operation of a motor vehicle by an employee (other than emergency vehicles) within the scop of his employment;

from injury proximately caused by the negligent act or omission of an employee in the course of his employment. Excepted from this act are injuries resulting from the performance or failure to perform discretionary acts, injuries arising out of assault, battery, false imprisonment, malicious prosecution, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of privacy or of civil rights and misrepresentation.

Notice of claim must be filed with the attorney general within one year after the cause of action arises and with the political subdivision within 90 days. Approval or denial of the claim must be given to the claimant within 90 days from the time he filed. No action by the subdivision within this time is deemed a denial.

Suit may be brought within one year of the denial of the claim or the end of the time for an answer. Plaintiff must file an undertaking with the court of at least $300 conditioned upon payment by plaintiff of the taxable costs incurred by the government if he fails to either prosecute the claim or recover judgment. Recovery against the government entity is a complete bar to any action against the employee.

Insurance

Government entities, including school boards, may purchase liability insurance against the risks arising out of the application of the statute above. Each policy shall provide for coverage of not less than $100,000 for injury or death of one person in one accident and not less than $300,000 for two or more persons in any one accident; property damage limits must be $50,000 for a single accident. Each policy must include a provision that the insurer agree not to insert the defense of soverign immunity.

Government entities may insure with public funds, any or all their employees against all or any part of their liability for injury or damages resulting from a negligent act or omission in the scope of their employment, regardless of whether the governmental entity is immune from suit for such act or omission.

If a judgment or award against a governmental entity exceeds the minimum insurance amounts specified above, the court shall reduce the amount of the judgment to the minimum requirement, but if the insurance coverage purchased exceeds the minimum required, the reduction shall be to the applicable limits of the policy. (Utah Code Annotated. Secs. 63-30.1--63-30-34)

WASHINGTON

Statutory Liability

All political subdivisions, municipal corporations, and quasi-municipal corporations shall be liable for their

tortious conduct or the tortious conduct of their officers, agents, or employees to the same extent as if they were a private person or corporation.

Insurance

School districts may make available liability insurance for members of boards, students, and employees. Such insurance will be paid for by the school district. (Revised Code of Washington Annotated. Secs. 35.10, 28.76.410)

WEST VIRGINIA

Boards of education shall have the authority to provide, at public expense, adequate public liability insurance. Any policy purchased must contain a provision whereby the issuer waives the defense of governmental immunity. This waiver shall operate only up to the coverage of the policy. (West Virginia Code. Sec. 18-5-13)

WISCONSIN

Since the 1962 decision in Holytz v. City of Milwaukee, (115 N.W. (2d) 619) governmental immunity from tort liability was abolished and all previous Wisconsin decisions upholding such immunity were overruled.

No tort action may be maintained against a political corporation, government subdivision, or agency nor against any officer, official, agent, or employee of such corporation, subdivision, or agency for acts done in their official capacity or in the course of their agency or employment unless signed written notice of time, place, and circumstances of the happening or event causing injury, damage, or death is served within 120 days of the occurrence. Failure to give the required notice is no bar to the claim if the entity had actual notice of the damage or injury, and if the injured party shows to the satisfaction of the court that the delay or failure in giving notice was not prejudicial to the entity.

The amount recoverable for damages, injury, or death in any one action is limited to $25,000 whether proceeded against jointly or severally. No punitive damages will be allowed.

No suits are permitted against a political corporation, government subdivision, or agency for intentional torts of its officers, officials, agents, or employees, or for acts done in legislative, quasi-legislative, judicial, or quasi-judicial functions.

These limitations are exclusive and shall apply in all tort actions unless rights and remedies are provided by other statutes. This section does not bar action against an individual for an intentional tort. (Wisconsin Statutes Annotated. Sec. 895.43)

WYOMING

Permissive Save Harmless Law

Any school district may save harmless and protect all teachers and members of the supervisory and administrative staff

from financial loss arising out of any claim, demand, suit, or judgment by reason of alleged negligence or other act resulting in accidental bodily injury to any person inside or outside the school building, provided the individuals thus protected, at the time of the accident or injury, were acting in the discharge of their duties within the scope of their employment and/or under the direction of the school board.

Insurance

School districts may arrange for or maintain appropriate insurance, or act as self-insurers for the protection outlined above.

This law shall not be construed as creating or tending to create a liability for a school district that protects and insures its teachers; nor shall the failure to procure insurance as authorized, be construed to create any liability on the part of the school district.

(Wyoming Statutes 1957. Secs. 21-157, 21-158)

PART II. STATUTORY PROVISIONS FOR PURCHASE OF LIABILITY INSURANCE THAT MAY HAVE APPLICATION TO SCHOOL DISTRICTS

ARKANSAS

Arkansas has no specific statute authorizing school districts to carry liability insurance. A provision in the insurance law, however, states that whenever liability insurance is carried by certain nonprofit and governmental agencies, including school districts and municipalities, that are not subject to suits for tort, any one who suffers injuries to person or property due to negligent conduct of such unit, or its employees or agents acting in the scope of their employment, shall have a direct cause of action against the insurer to the extent of the policy coverage. Plaintiff may sue the insurer directly, regardless of the fact that the actual unit may not be sued under the laws of the state.

The provision is explicit that carrying liability insurance is not required, and that the insurer may be sued directly regardless of the limitations to the contrary in the policy. Any restrictions in the policy that a judgment must first be recovered against the unit or the employee shall be void. (Arkansas Statutes 1947 Annotated. (1957 Replacement Volume.) Secs. 66-3240--66-3242)

IDAHO

There is no specific statutory provision that authorizes Idaho school districts to purchase liability coverage. However, in the insurance law, it is provided that on all liability policies sold to the state, any agency, department or other political subdivision, including municipalities or any specifically chartered subdivisions, and all political subdivisions organized under general laws of the state and exercising sovereign powers, or purchased directly, which shall protect these units or its officers or employees against liability for tort claims, shall carry an endorsement that the company will not deny liability because of sovereign immunity.

The immunity of the units enumerated above is waived to the extent of the liability insurance carried. The law states that the carrying of insurance is not required.

(Idaho Code. Secs. 41-3304--41-3306)

NORTH DAKOTA

Any political subdivision of the state may insure against claims of loss, damage, or injury made against such subdivision or any department, agency, or function, or any officer, agent, or employee of the subdivision. If insurance is purchased, immunity is waived only to the type and amount of coverage.

(North Dakota Century Code. Sec. 40-43-07)

TENNESSEE

All municipal corporations or other political subdivisions of the state are authorized to contract, at government expense, for policies of liability insurance to protect employees in the course of their employment.

(Tennessee Code Annotated. Sec. 6-641)

VERMONT

Vermont has no specific statute authorizing the purchase of liability insurance for teachers and other school employees. A law permits municipal corporations to contract for all forms of insurance for employees, and for liability insurance for motor vehicles owned and operated by it and the driver thereof.

When a municipality purchases a liability insurance policy, governmental immunity is waived to the extent of the policy.

(Vermont Statutes Annotated. Title 29, secs. 1401-1406)